

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NO. K04-S-146 and K04-S-147**

**FRANK ROBINETTE**

**APPELLANT**

**V.                                      ORDER NO. 19387**

**HARLAN COUNTY PROPERTY  
VALUATION ADMINISTRATOR**

**APPELLEE**

The Kentucky Board of Tax Appeals has delegated authority to the hearing officers pursuant to KRS 13B.030. The hearing officers entered a recommended order in compliance with the provisions of KRS 13B.110. No exceptions or objections to the recommended order were filed. The Board has reviewed the record and the recommended order.

The Kentucky Board of Tax Appeals through its hearing officers, Nancy Mitchell and Randall Phillips, conducted a hearing in this matter on June 27, 2005 and made the following findings of fact, conclusions of law and recommended disposition.

**FINDINGS OF FACT**

This assessment appeal is for real property located at Main Street (K04-S-146) and Island Street and Main Street (K04-S-147), Harlan, Kentucky. The Harlan County Property Valuation Administrator assessed the property on Main Street at \$19,500. The taxpayer or Appellant values the property at \$12,000. The Harlan County Board of Tax Appeals valued the property at \$19,500. The Harlan County Property

Valuation Administrator assessed the property on Main and Island Street at \$60,000. The taxpayer or Appellant values the property at \$35,000. The Harlan County Board of Tax Appeals valued the property at \$60,000. The Appellants filed timely appeals from the local board with the Kentucky Board of Tax Appeals.

The Appellants bought the Main Street property in 1993 for \$7,500. The PVA argues that Mr. Harold Parsons had paid \$600,000 for a comparable lot on which Mac's Supermarket was built and Mr. Blanton had used this as one of his comparables in arriving at the assessment of above properties. Mr. Blanton had deducted \$100,000 for a building which sat on the land so he valued the land at \$500,000 divided by 3.43 acres or approximately \$142,000 per acre considering location and other factors.

The Appellant offered the following evidence in support of Appellant's appeal: Mr. Robinette's attorney called in Mr. Harold Parsons who testified that the \$600,000 paid for the lot included a building valued at \$100,000 as well as the remainder of the Mac's Supermarket lease. He further stated that he received a separate tax billing for the Supermarket in the amount of \$250,000. Mr. Parsons had also stated that he assigned a value of \$475,000 for the improvements to the property and \$125,000 to the land.

It is the finding of this hearing that the Appellant did sustain his burden of proof regarding his challenge to the final order of the Harlan County Board of Assessment Appeals.

Based upon the evidence in the record, it is the finding of the hearing officers, that the fair cash value of the property in question as of January 1, 2004 is \$12,000 for the Main Street Property and \$35,000 for the property at Main and Island.

## CONCLUSIONS OF LAW

The Kentucky Board of Tax Appeals is vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders and determinations of the Harlan Board of Assessment Appeals, pursuant to KRS 131.340(1).

The function of the Board is not simply to review the action of the Harlan Board of Assessment Appeals, but to try anew the issues as presented. *Jefferson County Property Valuation Administrator v. Oxford Properties, Inc.*, Ky. App., 726 S. W. 2<sup>nd</sup> 317, 319 (1987). See KRS 131.340(1).

Section 172 of the Kentucky Constitution mandates that “all property shall be assessed for taxation at its fair cash value, estimated at the price it would bring a fair voluntary sale.”

The choice of the most appropriate and reliable approach to valuation is within the prerogative of the Board. *Jefferson County Property Valuation Administrator*, 726 S.W. 2d at 319.

Regardless of the manner or method used by the Property Valuation Administrator or the decision of the Kentucky tax Board of Appeals, the finding of valuation must be at its fair cash value, estimated at the price it would bring at a fair voluntary sale. *Helman v. Kentucky Board of Tax Appeals*, Ky.App., 554 S. W. 2d 889 (1977).

As the party proposing that the Kentucky Board of Tax Appeals set aside the decision of the Harlan County Board of Assessment Appeals, the Appellants have the burden of proving a lower value. KRS 13B.090(7).

If the property is sold at or near the assessment date in a fair and voluntary sale, the sale price is usually the best evidence of the property's fair cash value. *Sears, Roebuck & Company v. Boone County Board of Assessment Appeals*, Ky. App., 715 S. W. 2d 888, 889 (1986).

Based upon the facts as established in this hearing, the hearing officers conclude the fair cash value of the subject property as of January 1, 2004 is \$12,000 and \$35,000.

### **RECOMMENDED ORDER**

It is recommended that the November 12, 2004 final ruling of the Harlan County Board of Assessment Appeals be reversed and the real property on Main Street (K04-S-146) be assessed at a fair cash value of \$12,000 and the real property at Main Street and Island Street (K04-S-147) be assessed at a fair cash value of \$35,000 as of January 1, 2004.

Each party shall have fifteen (15) days from the date any recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party.

### **FINAL ORDER**

The Kentucky Board of Tax Appeals has considered the record and accepts the recommended order of the hearing officers, and adopts it as the Board's final order. Failure to file exceptions to an administrative hearing officer's recommendations after a hearing constitutes a failure to exhaust administrative remedies and precludes appellate

review. *Swatzell v. Natural Resources and Environmental Protection Cabinet*, Ky App 962 SW 2d 866 (1998).

The November 12, 2004 final ruling of the Harlan County Board of Assessment Appeals is reversed and the real property is to be assessed at a fair cash value of \$12,000 for the K04-S-146 property on Main Street and \$35,000 for the K04-S-147 property at Main Street and Island Street as of January 1, 2004.

The following information is provided pursuant to the final order requirements of KRS Chapter 13B:

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER  
AND MAILING: October 13, 2005**

**KENTUCKY BOARD OF TAX APPEALS  
FULL BOARD CONCURRING**

**NANCY MITCHELL  
CHAIR**